

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 341 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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NATWARLAL MAFATLAL PRAJAPATI

Versus

NANJIBHAI MANJIBHAI PATEL

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Appearance:

MR BB NAIK for Petitioner  
MR BG PATEL for Respondent No. 1 & 2.  
NOTICE SERVED for Respondent No. 3, 4

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2000

ORAL JUDGEMENT

1. The petitioner has filed this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908, challenging the order dated 30th January, 1996, recorded by the learned Civil Judge

(J.D.), Modasa, in Execution Petition No.20 of 1991, whereby the learned Executing Court dismissed the said application of the petitioner for joining him in the said litigation.

2. It appears that the litigation was going on before the Executing Court between the judgment-debtor and decree holder. The petitioner felt that he was the obstructor to the execution petition and, therefore, he had applied before the Executing Court to join him as a necessary party to the execution petition. The trial court found that he was not a necessary party and therefore his application was rejected.

3. Feeling aggrieved by the said order of the Executing Court, the petitioner has preferred this application before this Court; considering that being an obstructor he was a necessary party and therefore he was required to be joined in the execution petition. That the Executing Court has committed illegality while not joining him as a party in the litigation. The petitioner therefore prayed that he may be allowed to join as a party to the execution petition in question.

4. I have heard learned advocates for the parties and perused the papers. It is very clear that an obstructor can obstruct the execution of a decree, but for so doing, it was not necessary to join as a party to the execution petition. An obstructor would remain as an obstructor and his objection will be required to be entertained and decided by the Executing Court in the execution petition itself. Therefore, evenif, the petitioner has not been joined as a party to the execution petition, his obstruction will have to be considered by the Executing Court.

5. In aforesaid view of the matter, it can be said that the petitioner was not a necessary party to the execution petition and his obstruction or objection could be entertained by the Executing Court without joining him as a party to the execution petition.

6. Under the circumstances, it cannot be said that the order of the Executing Court is illegal. It therefore cannot be interfered with in this revision application.

7. In aforesaid view of the matter, this Civil Revision Application is without any merit and consequently it is dismissed with no order as to costs. However, if the petitioner raises obstruction by

appropriate application before the Executing Court, the Executing Court will naturally dispose of the same on merits after following the due procedure of law. Rule stands discharged with no order as to costs.

8. The petitioner will naturally file the obstruction petition within 10 days hereof and the Executing Court shall dispose of the obstruction application latest by 31st July, 2000.

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